

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ENCINITAS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012020128

ORDER DENYING STUDENT'S
SECOND MOTION FOR
CONTINUANCE TO FILE WRITTEN
CLOSING ARGUMENT

A due process hearing was convened in this case on September 10, 11, and 12, 2012, before the undersigned Administrative Law Judge (ALJ). At the close of the hearing, the ALJ granted the parties' request for a two and a half week continuance to file written closing arguments. The closing arguments were due by October 1, 2012. The Encinitas Union School District timely filed its closing argument on that date. However, instead of filing his closing argument, Student requested a one-week continuance to do so. Although Student offered no cause for the requested continuance, the ALJ granted his request since he is being represented by his mother, appearing in pro per. Student was given until October 8, 2012, to file his closing argument.

Student did not file his closing argument on October 8, 2012. Instead, on October 10, 2012, Student filed a motion to re-open or re-hear this case in order to broaden the scope of the hearing. On October 11, 2012, the ALJ denied Student's motion for re-hearing on the grounds that since this is a District-filed case, Student cannot move to modify the issues. The ALJ pointed out that she had addressed these same issues at hearing and Student was therefore under notice that he needed to file his own due process case if he wished the Office of Administrative Hearings to consider the issues he raised.

In the late afternoon of October 12, 2012, Student filed the pending motion for another continuance to file his closing argument. Student does not request a specific time frame in which to file his closing argument. Student's basis for his motion is: 1) his mother cannot afford an attorney and is only consulting an educational advocate for advice; 2) Student is only seeking to amend the scope of his request for independent educational evaluations, not add other issues; and 3) the hearing issues litigated were not those agreed to by the parties at the prehearing conference (PHC) in this matter held September 5, 2012.

Student has appeared in pro per through his mother for the entire course of this hearing. The fact that he does not have an attorney is not grounds for this second continuance. As to the scope of the issues for hearing, those issues were clearly stated in the Order Following Prehearing Conference. There is no indication in that Order that the ALJ

convening that PHC agreed that District assessments other than those indicated in the Order were at issue in this case. On the first day of the hearing, the undersigned ALJ clearly stated the issues for hearing. Student was informed numerous times during the course of the hearing what the scope of the issues were. Student was yet again informed of the issues being addressed in the instant proceeding in the Order denying his motion for new hearing.

If Student wishes other issues to be considered by OAH, he may file a due process request.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case. (See, e.g., Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances in determining whether to grant a request for continuance. (See, e.g., Cal. Rules of Court, rule 3.1332(d).)

Student has not provided good cause for his untimely request for a continuance to file his closing argument. He merely reiterates issues which have been addressed numerous times during the course of this proceeding.

Student is reminded that continued presentation of an issue already found not to be valid may result in a finding that a party is engaging in frivolous litigation tactics.

Student's motion for a continuance in which to file his written closing argument is DENIED.

IT IS SO ORDERED.

Dated: October 16, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings